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Summary record of the 1307th meeting
Held at the Palais Wilson, Geneva, on Thursday, 30 April 2015, at 3 p.m.

Chairperson: Mr. Grossman
later: Mr. Tugushi (Vice-Chairperson)

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The meeting was called to order at 3 p.m.

Consideration of reports submitted by States parties under article 19 of the Convention (*continued*)

Second periodic report of Serbia (continued) (CAT/C/SRB/2; CAT/C/SRB/Q/2; HRI/CORE/SRB/2010)

1. *At the invitation of the Chairperson, the delegation of Serbia took places at the Committee table.*

2. **Mr. Ilić** (Serbia) said that a task force set up by the Ministry of Justice had proposed amendments to the definition of torture as it appeared in the Criminal Code, which were expected to be in place by late 2015, if not earlier. The Office of the Protector of Citizens, or Ombudsman, was still a very new institution, and its relationship with other Serbian institutions was steadily improving. The office was in a position to fulfil its mandate, and any attempt to prevent it from doing so was certainly not the intention of the Government, which had increased the office's budget in each of the past three years. Regarding asylum practices, it was true that the authorities' failure to update the list of secure third countries was not ideal; nonetheless, the system was flexible. The Constitutional Court, in fact, had recently ruled that institutions involved in reviewing requests for asylum should proceed on a case-by-case basis, taking into account criteria in addition to the asylum seeker's provenance.

3. **Ms. Dragičević-Dičić** said that a failed reform of the judicial system in 2010 had initially involved the non-reappointment of several hundred judges and prosecutors, despite constitutional guarantees of lifetime appointments. They had ultimately been reinstated, but the mood in their ranks was still one of fear and mistrust. The composition of the High Judicial Council, a body that ensured the independence of the judiciary, was such that judges, who were nominated by their colleagues, were guaranteed an absolute majority. An analogous body, the State Prosecutorial Council, was similarly composed. Although the budget for the judicial system was drawn up by the Government, it had finally been separated from the general budget, and the High Judicial Council determined how it was used. A disciplinary board made up of judges themselves examined possible breaches of judicial discipline. In 2014, five judges had been removed from office. Another five had resigned on their own, and several more had had their pay docked for minor breaches of discipline, mostly having to do with their failure to schedule trials or draft decisions in a timely fashion. Judges were entitled to appeal their removals or any other sanctions imposed on them.

4. Moving on to issues relating to pretrial detention and detainees' rights, she said that some of the information found in the report that Serbia had submitted to the Committee was out of date, as laws had since been amended. Persons placed under arrest were entitled to counsel from the moment of their arrest. Glass barriers, which were effective, had been set up in police stations to allow counsel and client to meet privately, in accordance with the new Code of Criminal Procedure. Counsel was appointed by the courts or by the police in accordance with a procedure established by the Bar Association of Serbia. Nonetheless, when she herself had been a trial judge, she had attempted to ensure that more experienced counsel was appointed for defendants facing more serious charges. All persons who were detained had to be brought before a judge within 48 hours of their detention. They were also entitled to a medical examination by a doctor of their own choosing.

5. References to mandatory pretrial detention had been removed from the Code of Criminal Procedure, and the courts had been encouraged to turn to such alternative measures as house arrest and bans on leaving the country. In that connection, it had been necessary to combat the view, once commonly held by the courts, that the ability to post

bail, for example, was simply a privilege of the rich. Pretrial detention could not exceed 6 months during an investigation. It was true that there were still many people in jail awaiting trial, but statistics from the Ministry of Justice showed clearly that the number was falling. Judges had received training on article 5 of the European Convention on Human Rights. The Ministry of Justice had records of the cases of persons awaiting trial. Secrecy in that regard was not a problem.

6. The right to interpretation was currently provided for under article 11 of the Code of Criminal Procedure, not article 4. It was difficult for Serbia, which had a shortage of qualified interpreters and a surplus of crafty defendants, to ensure that the right was respected. Under Serbian law, persons charged with a criminal offence were entitled not merely to be informed, in a language they understood, of the nature and cause of the accusation against them, but also to request that criminal proceedings should be conducted in their language. As a result, ethnic Bosniaks and Croatians, for example, who spoke languages largely identical to Serbian, demanded that court proceedings should be translated into Bosnian or Croatian. She had proposed an amendment to the relevant provision of the Code of Criminal Procedure to bring it into line with the European Convention on Human Rights and to lessen the absurdity of the situation.

7. Regarding human trafficking, Serbia had brought its criminal legislation into line with international standards. In the training provided to judges, it was stressed that the consent of a victim to exploitation did not exempt the exploiter from criminal liability. If it was established that victims of human trafficking or exploitation were forced to beg or commit petty theft, they were not prosecuted, as recommended by the Organization for Security and Co-operation in Europe. In some cases, the victims themselves became exploiters, and decisions about whether to prosecute such persons were sometimes mistaken, as had been noted in reports by ASTRA, an NGO devoted to combating human trafficking. A proposal to set up a public fund that would bear the costs of compensating trafficking victims was being studied. The fund would draw on assets forfeited by convicted traffickers, some of whom had recently received long prison sentences.

8. **Mr. Vulević** (Serbia), replying to a question about whether Serbia had entered into multilateral agreements to combat trafficking, said that Serbia was a signatory to several such agreements, the three most important of which were the United Nations Convention against Transnational Organized Crime, the Palermo Protocol and the Council of Europe Convention on Action against Trafficking in Human Beings. The provisions of those instruments were directly applicable in Serbian law. Indeed, the text of article 3 of the Criminal Code drew directly on the Palermo Protocol. The social welfare services had recognized trafficking victims as a group requiring special support and protection. Shelters for trafficking victims were expected to be fully operational by September 2015. Committee members had referred to Serbia as a country through which trafficking victims transited, but it was in fact a country from which they originated. In recent years, the number of Serbian trafficking victims reported had increased, but it was his belief that the increase was largely the result of improved detection and reporting. Lastly, the social services had set up special teams in 120 local communities to reach out to street children, who were the group most vulnerable to being trafficked.

Mr. Tugushi (Vice-Chairperson) took the Chair.

9. **Mr. Pantelić** (Serbia) said that the various activities designed to combat human trafficking were coordinated by the Ministry of the Interior. Work was well under way on a draft national strategy for the prevention and suppression of trafficking in human beings, in particular women and children, for the period 2015–2020. The objective of the strategy was to build up the capacity of all the public institutions involved in anti-trafficking efforts and to ensure improved cooperation with civil society. The Government was expected to

approve the implementation of the strategy once estimates of its cost, which were currently being produced, had been properly evaluated.

10. Serbia had signed an agreement on strategic cooperation in 2014 with the European Union's law enforcement agency Europol. The agreement, annex 1 of which provided for cooperation in the area of trafficking in human beings, had greatly enhanced the capacity of the Serbian police.

11. The Ministry of the Interior had signed a Memorandum of Understanding with the National Crime Agency of the United Kingdom in 2014. A cooperation agreement had also been signed with Azerbaijan.

12. The International Organization for Migration (IOM) and the Centre for Protection of Victims of Trafficking in Human Beings (PVPT) were implementing a project, in partnership with the Ministry of the Interior, aimed at strengthening the system for the identification and protection of victims. In late 2014 the project had developed draft national indicators for the recognition of trafficking victims on behalf of the police and prosecutors.

13. **Ms. Dragičević-Dičić** (Serbia) said that 81 final judgements on cases of human trafficking had been handed down in 2013. The Ministry of Justice was developing a database of convictions disaggregated by age, gender, criminal offence and other factors.

14. All victims of torture were entitled to compensation, but it was difficult to exercise that right because criminal courts were not required to address the issue if such action would greatly prolong the duration of the proceedings. However, non-material damages were relatively easy to assess by physicians and psychologists and were therefore awarded more frequently by the courts.

15. The State was liable for damages sustained from war crimes. It had awarded compensation prior to 2000 to soldiers of the former Socialist Federal Republic of Yugoslavia who had sustained traumatic injuries during the wars in Croatia and Bosnia and Herzegovina. A 15-year statute of limitations was now applicable to damages for war crimes.

16. The Committee had been informed that statutes of limitations of 5 and 10 years were applicable to damages for the crimes of torture and coercion of confessions. Those were in fact relative figures and the absolute statute of limitations could in practice extend to 20 years. The Belgrade Appellate Court had recently repealed a first-instance decision because the 15-year statute of limitations had not been respected and had ordered a retrial. The same court had adopted a decision on 13 June 2014 concerning the torture of 55 persons of Muslim persuasion in 1995 in a camp near the town of Ujitsa. The ruling had led to the resumption of compensation proceedings on behalf of the persons concerned.

17. The Judicial Academy was fully independent. It was funded by the Ministry of Justice. The Management Board was composed mainly of judges and the curriculum had been endorsed by the High Council of the Judiciary and the State Prosecutorial Council.

18. The Code of Criminal Procedure, as amended, provided for summary proceedings under article 137 of the Criminal Code, in cases where the offence entailed a prison sentence of less than 8 years. As the potential penalty for crimes of torture and ill-treatment exceeded 8 years, summary proceedings did not apply in such cases. An aggrieved party could not proceed with a prosecution if the prosecutor decided, upon investigation, not to file an indictment. However, the aggrieved party could file an objection with a senior prosecutor.

19. Four persons had been convicted of torture or ill-treatment in two judgements concerning the rehabilitation centre for drug addicts in Crna Reka. The manager of the

centre had been sentenced to 20 years' imprisonment. Proceedings were being conducted against five persons for torture and ill-treatment in the correctional institution in Požarevac. The head of the centre and three wardens had been prosecuted for failing to take the requisite supervisory measures.

20. **Mr. Rabrenović** (Serbia) said that Serbia had received five recommendations concerning war crimes during its negotiations with the European Union. They were set out in the third version of the Action Plan. The Ministry of Justice had established a working group to draft a national strategy for the prosecution of war crimes. A prosecutorial strategy setting out criteria for addressing priority cases was also being drafted. The capacities of the War Crimes Prosecution Office would be strengthened and steps would be taken to promote closer cooperation with the International Criminal Tribunal for the Former Yugoslavia (ICTY). Priority would be given to cases against high-ranking suspects. He confirmed that rape would be treated as a war crime.

21. The Ministry of Justice had accepted a recommendation from European Commission experts concerning the conduct of an impartial and independent audit of the Witness Protection Unit of the Ministry of the Interior. Perpetrators of war crimes involving mass graves had been prosecuted in four or five different cases. Serbia had given the ICTY Office of the Prosecutor access to its archives. The evidence found in the archives had enabled ICTY investigators to identify a leading perpetrator of crimes involving the transfer and concealment of bodies.

22. **Ms. Stepanović** (Serbia) said that prisoners underwent a medical examination not more than 24 hours after being admitted to prison. That time limit had been exceeded in a small number of cases because of a shortage of physicians, but 48 hours was the absolute limit. Prison officials could be present during the examination only at the physician's request. A medical file was maintained for each prisoner, and physicians were required to report any injuries from coercion measures to the prison director without delay. The Ombudsman had stated in his 2014 report that his recommendations had been implemented and that the medical reports contained the requisite data.

23. The Directorate for enforcement of penal sanctions had achieved significant results through its strategy for reducing prison overcrowding during the period from 2010 to 2015. Its implementation had required the enactment of the Amnesty Law, the Law on enforcement of penal sanctions and amendments to the Criminal Code and the Criminal Procedure Code. The wider application of non-custodial sanctions included community service, house arrest and conditional release. As a result, the number of detainees had declined from about 11,300 in 2011 to about 10,500. The current capacity of penal and correctional institutions was 9,000. The Law on enforcement of penal sanctions provided for a space of at least 4 square metres for each detainee. The current average figure was 3.5 metres. Conditional release had accounted for 20 per cent of all releases in 2014. During the same year, 1,566 alternative measures and sanctions had been implemented. Offices for the enforcement of alternative sanctions had been opened at all higher courts.

24. In February 2012 a new high-security prison for 450 detainees had been opened. The construction of new juvenile facilities had been completed in October 2013. Three units of Belgrade District Prison had been reconstructed in 2013 and 2014. The Special Prison Hospital would be fully refurbished by 2017.

25. **The Chairperson**, speaking as Country Rapporteur, said that the Ombudsman should on no account be denied access to the information he required to fulfil his mandate, especially information on criminal incidents. In some cases, defendants had no contact with their assigned legal counsel until the first hearing. The last report of the European Committee for the Prevention of Torture had contained complaints about legal aid services provided by the Bar Association. While he welcomed the decline in the number of

detainees in remand custody, he recommended that further action should be taken to promote alternatives to imprisonment. Both judges and prosecutors should be made aware of the benefits of non-custodial measures. He stressed the importance of producing disaggregated data concerning torture, ill-treatment and current prosecutions.

26. Noting that persons returned from Hungary to Serbia were often transferred to the former Yugoslav Republic of Macedonia, he asked whether the persons concerned could request asylum in Serbia, and whether they were guaranteed access to legal remedies, free legal aid and interpretation services. He also wished to know whether there had been any investigations into alleged corruption and ill-treatment by immigration officials.

27. He enquired about the right of Serbian police officers to summon persons for "informative talks" that could last for up to four hours. Did the persons concerned have access to a lawyer? The Committee had been informed of allegations of ill-treatment in police custody and in Leskovac District Prison. Some complaints had allegedly been withdrawn under pressure and intimidation. He asked whether those allegations had been investigated. The Committee had also been informed that only two police officers had been convicted in the course of 79 criminal proceedings concerning torture and ill-treatment between October 2012 and November 2014. The sentence against one convicted officer had been suspended and an 8-month sentence had been handed down against the other officer. The prosecutors had abandoned the investigations in the remaining cases or the courts had ruled in favour of the officers concerned. He therefore concluded that impunity was still a serious issue.

28. According to paragraph 116 of the report, the Internal Control Department of the Ministry of the Interior had received 391 complaints concerning police officers. He asked whether such complaints were also communicated to the Public Prosecutor's Office. The Committee had been informed of the failure to prosecute senior officials for command responsibility for the torture and murder of over 200 Croatian civilians. He asked whether there had been any change in that situation.

29. The Higher Court in Belgrade that dealt with war crimes and the War Crimes Prosecution Office reportedly lacked sufficient resources and funding. He asked whether any steps had been taken to reinforce the War Crimes Investigation Service. The law enforcement authorities allegedly failed to act with due diligence to tackle crimes motivated by hate or racism. He wished to know whether there had been any improvement in that regard. He also requested information regarding investigations of verbal attacks, harassment and attempted intimidation of independent journalists by public officials.

30. **Ms. Pradhan-Malla** (Country Rapporteur) asked how international treaties were implemented at the domestic level. She enquired about the status accorded to foreign victims of trafficking in human beings under Serbian immigration law.

31. **Mr. Bruni** said that the National Assembly, acting on a recommendation from the Ombudsman, had ordered the Government to allocate the necessary funds in the budget proposal for 2015 for the construction or refurbishment of detention rooms in police stations so that they complied with applicable standards. The National Assembly had also requested the Government to consider transferring responsibility for the administration of health services in prison facilities from the Ministry of Justice to the Ministry of Health. He asked whether the Government had acted on those recommendations.

32. **Mr. Domah** said that, under article 2 of the Convention, the judiciary was required to take steps in its own right to prevent torture. Court judgements should therefore provide guidance to the executive and legislature, and one or two ground-breaking pronouncements would help establish the leading position of the judiciary in the democratic system Serbia was trying to create. It was important for the judiciary to have full control of its own training, for only the judiciary could know its own needs. Training should cover the

concept of timely access to counsel and include a specific component on the Convention. In cases of prison deaths, it was important that joint perpetrators and accomplices were prosecuted too.

33. **Ms. Gaer**, referring to question 25 in the list of issues (CAT/C/SRB/Q/2), said that the Ombudsman's Office, when inspecting police stations in its capacity as national preventive mechanism, had noted that there were non-standard issue objects such as baseball bats, iron rods and wooden sticks in interview rooms. A common explanation was that they were items confiscated by the police and that there was nowhere else to store them, but the Committee found it troubling and she wondered what was being done to prevent that situation arising.

34. According to the report from the Humanitarian Law Centre, many Serbian police and military officers, who had been indicted in connection with alleged war crimes or concealment of war crimes, were still in senior positions and obstructing investigations. Moreover, 15 per cent of those indicted had apparently been in active service at the time of indictment. She would like to know if any thought was being given to introducing background checks in order to prevent such persons holding positions of authority in which they could continue to commit abuses. She noted that the law currently did not require the removal of individuals subject to criminal proceedings. Was any such measure under consideration?

35. **Ms. Belmir** said that she welcomed the recent legislation designed to regulate and strengthen the judiciary. Judges were appointed on objective criteria relating to merit and competence, and elected by their peers. However, their appointment then had to be confirmed by the National Assembly. That procedure undermined the separation of powers and trespassed on the independence of the judiciary. Moreover, no evaluation of judges' work should result in the bringing of criminal charges. A bad judgement could be challenged in a higher court – it was not a criminal offence.

36. **Mr. Modvig** said that the system of compensation for victims did not provide prompt and effective remedy as required under the Convention. In some cases compensation was awarded under contract and tort law, and it could take many years; in addition victims were required to go and identify the perpetrator, and the statute of limitations applied. A nationwide needs analysis should be carried out and appropriate legislation drafted to meet the requirements of redress, including rehabilitation for all victims.

37. **Mr. Zhang** said that he appreciated that, with the judicial database not yet perfected, it was difficult to obtain detailed information on committals. However, he would welcome some rough figures on the number of cases of war crimes that had already been prosecuted and how many might need to be handled in the future if the perpetrators were identified.

38. **The Chairperson**, turning to the question of involuntary placement in mental health-care institutions, asked whether there had been any new mental health legislation since 2011. Was there any requirement for courts to take their decisions on involuntary hospitalization in an expeditious manner, especially when committing someone to a specialized institution? He wondered whether there was any provision to systematically inform those who were to be committed of the courts' or the psychiatric commissions' decisions. Did those patients have access to legal assistance independent of the admitting hospital? There were reports that mechanical restraints, when needed, were applied in full view of other patients. According to the Ombudsman's report such measures were subject to regulation and he wondered whether those regulations were applied.

The meeting was suspended at 5.10 p.m. and resumed at 5.20 p.m.

39. **Mr. Ilić** (Serbia) said that the question of access to counsel was a matter of legal ethics. The legal profession was independent, with its own bar association and disciplinary procedures to ensure that ethical standards were observed. On the question of prison overcrowding, he said that standards were already good, but thanks to the budget allocated to prison building and the construction schedule it was only a matter of time before further improvements would be seen.

40. It was true that there were problems with crime statistics, but progress had been made in cooperation with the European Commission and as part of the European Union accession process. Consideration was being given to installing state-of-the-art statistical systems such as those used in the Netherlands. In the case of torture in Leskovac prison, the State had responded and five individuals were being prosecuted. The Ministry of the Interior's internal oversight body always cooperated with the public prosecutor's office whenever a member of the Ministry of the Interior committed a crime.

41. No statistics were available on convictions of police officers but they could be provided at a later date. The National Assembly had given clear instructions to the Government to improve conditions in police stations. The Ministry of the Interior, as the ministry responsible, took the order very seriously. There was a schedule of works outlining the specific measures to be taken. As to the transfer of prison health care from the Ministry of Justice to the Ministry of Health, the process was under way. It was a lengthy and expensive undertaking and was being carried out in cooperation with the Ombudsman's Office. The latter had made over 250 recommendations following its inspection of prisons. All the key recommendations would be implemented. A commission had been set up to oversee removal of non-standard equipment from police stations. The very serious allegations that serving police and military officers had been involved in concealing war crimes needed to be substantiated. As to training for the judiciary, he said that the new Judicial Training Academy was soon to provide advanced training for judges and prosecutors in crimes under the Convention.

42. **Mr. Rabrenović** (Serbia) said that 175 people had been prosecuted for war crimes and 68 convicted in the upper court, while 24 cases were under investigation and 40 were in the pre-investigation stage. Indictments to date concerned over 4,300 victims. In the future more complex cases of joint liability and crimes against humanity could be expected to come before the courts. In the Ovčara case there had been convictions and the next trial was scheduled for June 2015.

43. Background checks on police and military were envisaged in the recommendation in the action plan relating to witness protection. Anyone suspected of war crimes was suspended in accordance with the law. International conventions ratified by Serbia had the same rank as domestic law. In terms of their application to past crimes against humanity, it was necessary to look at what customary law had been in force at the time.

44. **Ms. Velimirović** (Serbia) said that Serbia was not in a position to cope with the huge increase in asylum seekers. In 2014 there had been 16,000 and in 2015 to date 10,000. In the winter of 2013–2014 a humanitarian disaster had been only narrowly averted when additional capacity had been installed. Few decisions were taken, compared with the large number of applications. The average length of stay in reception centres was around 10 days. Efforts were being made in cooperation with the European Union and the Office of the United Nations High Commissioner for Refugees (UNHCR) to increase capacity and improve training, with positive results. Expulsion was prohibited if there was a risk that the person could be subject to torture and the data showed that no refoulement took place where that was the case. As to persons coming from Hungary, she said that all those whose applications had been adjudicated, and provided that no final decision had been taken by the courts, would be returned.

45. **Mr. Vulević** (Serbia) said that involuntary hospitalization was regulated by the laws on non-contentious proceedings and on the protection of mental health. Accordingly, the courts took their decisions within 24 hours. As to reports of people being hospitalized against their will without due process, he said that the number fell within the margin of statistical error and the figures were not based on a valid sample. Victims of trafficking were entitled to reside in Serbia regardless of their involvement or otherwise as witnesses in proceedings.

46. **Mr. Jokić** (Serbia) said that, according to the regulations introduced in 2013, measures of restraint on mental health patients were to be used only to ensure their own or another person's safety and provided all other measures had proved ineffective. They were to be applied by competent medical personnel for only the length of time absolutely necessary and not in such a way as to degrade or humiliate or prevent access to treatment.

47. The number of reported deaths referred to all persons in inpatient care who had died in psychiatric institutions in the five-year period 2010–2014. The figure given in the annex to the report was the number of persons admitted without their consent during that period. As could be seen, the number of women was lower and no conclusions could be drawn concerning a single category of patient from the data on the total number of persons treated and the total number of deaths. It should be noted that the total number of patients was considerably higher than the number of those admitted involuntarily. In general, the total number of beds in special psychiatric hospitals had been reduced and would continue to be reduced as mental health care in the community was prioritized. The Ministry of Health would work on improving oversight.

48. **Ms. Mohorović** (Serbia) said that in the individual cases mentioned by Mr. Grossman monetary awards had been made for damages. A mechanism to monitor implementation of treaty body recommendations had been set up in late 2014 in compliance with the recommendations of the universal periodic review. As to the Roma minority in Belgrade, she said that 303 families, and in late 2014 a further 24, had been housed, while 25 families were awaiting completion of their housing units.

49. **Mr. Rabrenović** (Serbia) said that the Ministry of the Interior and the Ministry of Justice would be taking steps to set up a register of torture cases as soon as possible.

50. **Mr. Pantelić** (Serbia) said that, in the case of the assault on Slobodan Stojanović at the Belgrade Pride Parade, the Ministry of the Interior had submitted several criminal reports to the relevant body in accordance with the Criminal Code.

The meeting rose at 6 p.m.